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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,333	03/26/2004	Nelson G. Bingel III	31518.0new	1590
26712	7590	11/21/2006	EXAMINER	
HODGSON RUSS LLP ONE M & T PLAZA SUITE 2000 BUFFALO, NY 14203-2391			LAUX, JESSICA L	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 11/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/811,333	Applicant(s) BINGEL ET AL.	
	Examiner Jessica Laux	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10 and 13 is/are rejected.
- 7) ☐ Claim(s) 7, 11, 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>06/28/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Invention I in the reply filed on 10/26/2006 is acknowledged.

Accordingly claims 14-16 have been cancelled and claims 1-13 will be examined.

Information Disclosure Statement

The information disclosure statement filed 06/28/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by B.H. Kennedy (2508032).

Regarding claims 1-5: B.H. Kennedy discloses a truss for reinforcing a pole, the truss comprising: an elongated body having a pair of opposite ends connected by a pair of longitudinal edges (Figure 3, element 2); the body having an open cross-sectional configuration characterized by a pair of side flanges (10 and the portion between 11 and 8) each extending from a respective one of the longitudinal edges in a direction

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diverging from the other side flange, and an intermediate section connecting the pair of side flanges, wherein the intermediate section of the cross-sectional configuration includes: a pair of bridge portions (8 & 5 and 4&7) associated, one with each of the pair of side flanges, and joined by a curved bend, each bridge portion extending in a direction forming an included obtuse angle with the direction of the associated flange; and a pair of apex portions (the portions extending on each side of 6) associated one with each of the pair of bridge portions, and joined by a curved bend, each apex portion extending in a direction forming an included obtuse angle with the direction of the associated bridge portion, wherein the pair of apex portions converge toward one another and are joined by a curved bend forming an excluded angle (where each apex portion is joined to element 6 by a curved bend, Figure 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 8, 9-10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.H. Kennedy (2508032).

Regarding claims 6 and 8: Kennedy does not expressly disclose the truss according to claims 2 and 3, wherein fastener holes are provided through each of the

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pair of bridge portions and through the curved bend joining the apex portions. However Kennedy does disclose that bolts may be used for fastening in the claimed locations, and it obvious and well known to have holes provided for fastening with bolts.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the truss of Kennedy to have fastener holes provided through each of the pair of bridge portions (Figure 4) and through the curved bend (6, Figure 1) joining the apex portions.

Regarding claim 9: Kennedy discloses a truss for reinforcing a pole, the truss comprising: an elongated body having a pair of opposite ends connected by a pair of longitudinal edges; the body having an open cross-sectional configuration characterized by: a pair of straight apex portions (the portions extending on each side of 6) forming an excluded angle A1 with one another; a pair of straight bridge portions (8 & 5 and 4&7) each forming a first included angle A3 with an associated one of the pair of apex portions; a pair of straight side flanges (10 and the portion between 11 and 8) each forming a second included angle A2 with an associated one of the pair of bridge portions;

Kennedy does not expressly disclose that the angles A1, A2, and A3 are chosen to satisfy the following relationship: $180 - A2 - A3 + (1/2) * A1 > 0$ in which angles A1, A2, and A3 are expressed in degrees. However applicant has not disclosed that such a relationship solves a stated problem, is used for a particular purpose, or provides an advantage. Applicant does state that such a relationship causes the flanges to diverge from one another. Kennedy discloses flanges that diverge from one another and

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portions that form obtuse angles with one another, moreover it appears that the truss of Kennedy or applicant's invention would perform equally well with the portions extending at any obtuse angle. Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified Kennedy such that the angles satisfied the required relationship because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Kennedy.

Regarding claim 10: The truss according to claim 9, wherein the cross-sectional configuration is further characterized by an axis of symmetry midway between the pair of edges, and the pair of apex portions are symmetrical about the axis of symmetry, the pair of bridge portions are symmetrical about the axis of symmetry, and the pair of side flanges are symmetrical about the axis of symmetry (Figure 3).

Regarding claim 13: The truss according to claim 9, wherein the pair of apex portions are joined to one another by a curved bend, each of the pair of bridge portions is joined to an associated one of the pair of apex portions by a curved bend, and each of the pair of side flanges is joined to an associated one of the pair of bridge portions by a curved bend (Figure 3, element 2).

Allowable Subject Matter

Claims 7, 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JL
11/13/2006



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